CIVIL PENALTY POLICY

STATE OF COLORADO
WATER QUALITY CONTROL DIVISION
DENVER, COLORADO

MAY 1, 1993

I. <u>Introduction</u>

Section 25-8-608, C.R.S. of the "Colorado Water Quality Control Act" (the Act) provides for civil penalties of up to \$10,000 per day for violations of; the Act, any permit issued pursuant to the Act, or any final cease and desist order (CDO). The Water Quality Control Division (the Division) is responsible for recommending a civil penalty amount to the designee of the Executive Director of the Colorado Department of Health. The Assistant Director for the Office the Environment, who is the designee of the Executive Director, is then responsible for imposing a penalty which may be equal to, greater than, or less than the penalty recommended by the Division. Once the penalty has been assessed by the assistant director, the violator has the right to appeal the penalty amount to the Water Quality Control Commission (the Commission) and may further appeal the Commission's decision to a court of competent jurisdiction.

II. Objective

This document establishes the guidelines which the Division will use as its basis for developing civil penalty amounts and is designed to provide for a fair and consistent approach while allowing for a reasonable amount of flexibility.

It is appropriate, in respect of the permittees who put forth the necessary effort (physical and financial) to remain in compliance, to pursue collection of a civil penalty where a notice of violation (NOV) must be issued because a permittee has failed to make this effort. These penalties are intended to encourage facility compliance through proper operation and maintenance and timely facility upgrades. The Division will continue its historic effort of working with permittees to achieve and maintain compliance. But, where that fails, formal enforcement will result and civil penalties will be sought.

III. Initial Penalty Determination

The Division will establish an "initial" proposed penalty which normally will be used as a starting point in any settlement negotiations once the NOV has been issued and the legally required period for submittal of a response has passed. The "initial" penalty for effluent violations will be based upon the following criteria:

- (1) Potential Damage
- (2) Fault
- (3) History of Non-Compliance

The initial penalty for administrative violations will be determined as provided for under Part III.B.

- A. Methodology For Determining Penalties For Effluent Violations
 - Potential Damage Component (\$6,000/day of violation-maximum) This component is based on the potential the effluent violation(s) had to damage one or more of the classified beneficial uses of the receiving water. Where the receiving water is not classified for a beneficial use which is in place, the potential damage component will be determined based on uses established in the permit, or as otherwise determined by the Division. Examples of this last concept would be: 1) an agricultural use where a discharge is to an irrigation ditch; or 2) a water supply use where a discharge is to a segment on which a surface water supply use is in place.

Where no beneficial use in the stream or waterbody receiving the discharge has been established, the penalty for the "potential damage" will be based solely on the type of technology based limitation or control regulation that was The calculation of the potential damage component violated. will be done by using a chart (Figures 1 & 2) which assigns a point value based on the pollutant and the established beneficial use or, for technology based parameters, based on the pollutant alone. The potential damage component for violations of internal limitations will be assessed using the figure for technology based limits. A multiplier (Figure 3) will be applied to the point value, based on the degree of exceedance and the actual flow rate of the discharge, to calculate a point total for that single violation. The flow to be used (30-day avg., daily avg., etc.) should be consistent with the averaging period for the type of limit that was violated. The point total is to be multiplied by \$200/point to arrive at a potential damage penalty value for the violation. Penalty amounts for each violation cited are to be calculated. For any calendar day where there was more than one violation cited, the potential damage component of the penalty for that day shall be set using the largest penalty amount for any individual parameter.

Use of this component is relevant only where the Division does not have site specific data on the impact the violation(s) had on the beneficial uses of the receiving water. Where information is available which shows that a measurable impact (fish kill, drinking water contamination, etc.) occurred, the portion of the penalty attributable to the impact, at a minimum, will be greater than that which would have been assigned using the above-described potential damage criteria. In such cases, depending on the impact of the violations, the portion of the penalty attributable to the impact may be set at a level which would make the total daily penalty at an amount equal to the statutory maximum.

If the violator can show, through in-stream sampling data, actual effluent and stream flow data, biomonitoring results, etc., that actual conditions in the receiving water as a result of the discharge would have resulted in little or no damage to the beneficial uses, the potential damage portion of the penalty may be reduced by as much as fifty percent.

In the case of a discharge without a permit or a discharge from an unauthorized point, since there are no effluent limits and associated monitoring, the potential damage portion of the penalty may be set at a value of up to \$6,000/day in the absence of site-specific flow, sampling and water quality data. Under these circumstances the Division may use reasonable assumptions in determining a "relative" impact that the discharge had on the receiving water. These assumptions should be based on any physical evidence (eg. known volumes and estimated periods of discharge to establish an average flow rate, chemicals used at the site, etc.) which the discharger has provided. the absence of such data the penalty will be based on the type of "business" (municipal wastewater treatment plant, heavy industry, etc.), the classification of the receiving waters and any eyewitness or after-the-fact assessments of the impact the discharge had on the receiving waters.

Where adequate data is available the potential damage shall be determined using the same criteria for a permitted discharge.

In either case, in order to account for the fact that the discharge was not authorized, the penalty may be increased by up to 50 percent over the calculated value but it shall not exceed \$6,000.

- 2. Fault Component (\$3,000/day of violation-maximum) This component can be assessed from one of three categories, based on the degree of fault which can be attributed to the violator and which may have caused or contributed to each violation cited.
 - a. Category 1 (\$200 to \$1,000/violation) Any situation where the violator could not reasonably have been expected to be aware of the circumstances which led to the violation.
 - b. Category 2 (\$1,000 to \$2,000/violation) Any situation where the violator should have been aware of circumstances which led to the violation or where a delay in the completion of physical or operational improvements was beyond the control or means of the violator. The size of the entity, as well as the engineering, legal and financial resources at their disposal, will be considered in determining whether the fault component is considered to fall within category two or category three.

c. Category 3 (\$2,000-\$3,000/violation) - Any case where the violator was aware of the circumstances which led to the violation and failed to take the necessary steps to prevent it. Situations where the violator had specific information (Division inspection report, internal communications, engineering studies, etc.) that violation was imminent and did not take steps to prevent it would fall into this category.

Penalty amounts using one of the three categories will be determined for each day of violation based on the circumstances which led to the violation. The size (design flow) of the facility and its classification under the Operator Certification Regulations will be taken into account in determining penalty amounts within each category of the fault component since the level of sophistication is expected to be greater for larger and more complex facilities. Penalty amounts for each calendar day shall becalculated by totalling the penalties attributable to each unique set of circumstances for any violations which occurred on that particular day, up to a maximum amount of \$3,000/day.

- 3. History Component (\$1,000/day of violation-maximum) The penalty amount attributable to the violator's history of non-compliance with the water quality statute and regulations will be based on the criteria in the following categories.
 - a. Category 1 (\$1000/day of violation) Previous NOV and CDO issued for one or more violations cited in the current NOV within three years of the date of issuance of the current NOV. This category applies where the violator did not not substantially comply with a final condition of the previous CDO or a superceding stipulated agreement.
 - b. Category 2 (\$900/day of violation) Previous NOV issued for one or more violations cited in the current NOV, within three years of the date of issuance of the current NOV.
 - c. Category 3 (\$600-\$800/day of violation) Previous NOV and CDO issued for violations, other than those cited in the current NOV, within three years of the date of issuance of the current NOV. This category applies where the violator did not substantially comply with a final condition of the previous CDO or a superceding stipulated agreement.

- d. Category 4 (\$400-\$600/day of violation) Previous NOV issued for one or more violations, other than those cited in the current NOV, within three years of the date of issuance of the current NOV.
- e. Category 5 (up to \$400/day of violation) Any effluent violation during the previous five years, other than those cited in the current NOV, which has been documented on a DMR or in written form.

Where multiple categories under the history component can be justified, the category that directly relates to the violation which occurred on the day of violation in question shall be used in determining the penalty for that day.

B. Methodology For Determining Penalties For Administrative Violations

Penalties for administrative violations will be determined by one of the following methodologies.

Administrative Violations Which Contributed To In-Stream 1. Impacts or Effluent Violations - Where there are administrative violations (violations of pretreatment conditions, discharging from a point not authorized by the permit, failure to report acceptance of additional pollutants at the treatment plant, etc.) which led to the discharge of a pollutant which had an impact on the receiving stream, the penalty for such violations will be calculated by using the procedure outlined in Part III.A. In such cases, actual in-stream impacts (fish kill or noticible changes to the stream's appearance), impacts as determined by calculation of in-stream pollutant concentrations, or exceedances of calculated effluent limitations will be used to determine the potential damage component of the penalty. The Division may use best engineering judgement to determine probable effluent quality, effluent flow rates, etc., in the absence of actual If an in-stream impact cannot be demonstrated, then the penalty will be calculated in accordance with Part III.B.2.c.

- 2. All Other Administrative Violations Penalties for all other administrative violations will be set as described below.
 - a. Penalties For Delinquent Or Improperly Completed Discharge Monitoring Reports Submittal of complete and timely discharge monitoring reports (DMRs) is mandatory since the DMR provides essential information which the Division must have in order to assess compliance with the effluent limitations for the facility.
 - i. Penalties for delinquent, late or improperly completed DMRs will be \$250 per DMR if the corretly completed DMR is submitted prior to the issuance of the NOV and \$500 per DMR thereafter. In cases where the permittee has been issued a previous NOV for late or incomplete DMR's, or where the Division has a long history of correspondence with the permittee regarding these types of violations, the penalty for each report may be increased by one hundred percent per occurrence. The amount of the increase will be based on the period during which these violations have occurred and the severity of the violations.
 - ii. In instances where the permittee has failed to complete a DMR because of the unavailability of analytical effluent results, or where all available data have not been reported, the Division will set the penalty as follows:

In situations where an incomplete DMR is submitted the penalty, for violations cited in the first NOV, will consist of a base penalty per DMR of up to \$500 plus the cost of analysis for each missing paramater. Penalties for violations cited in a second NOV will be set at an amount which is higher than the first penalty, up to a base penalty per DMR of \$1,000 plus twice the cost of analysis for each missing parameter. Division can demonstrate that there was a good chance that effluent violations occurred for any parameter for which results were not reported, then the penalty shall be calculated in accordance Such demonstration could be with Section III.B.1. made by interpretation of operational data or could be made by showing that effluent violations for the subject parameter occurred before or after the period in question (or both) and that it was unlikely that the effluent could have been in compliance during the period in question.

In situations where the permittee failed to report all available data there will be no penalty unless the inclusion of the unreported data resulted in an increase in the actual value which, in turn, resulted in an unreported violation or a greater degree of violation. In such cases the NOV will be amended to reflect the new value and the penalty for the effluent violation will be twice that which was calculated using the procedure outlined in Section III.A.

- b. Penalties For Delinquent Or Improperly Completed Annual Reports The penalty for delinquent or improperly completed annual reports shall be; up to \$250 per report if a properly completed report is submitted prior to the issuance of the NOV; \$250-\$500 per report if submitted within the timeframe identified in the CDO, and \$500-\$1,000 per report thereafter.
- c. Penalties For Other Administrative Non-Compliance Penalties will be assessed under this category for
 failure to submit a compliance schedule item, failure
 to report non-DMR information, or violation of a
 control regulation which was not related to any
 effluent violation cited in the NOV. These violations
 might include; failure to install a flow measuring
 device, failure to submit a spill plan, failure to
 submit a one-time analysis, violations of pretreatment
 conditions, reporting violations, etc.

Penalties will be assessed on a per-day basis taking into consideration: (1) actual or potential impacts on the facility's ability to meet other permit conditions; (2) the impact the violation had on the monitoring and reporting of treatment system performance and/or effluent data; and (3) the size (design flow) and operator certification level of the facility. The maximum daily penalty for these types of administrative violations will be \$100 unless an economic benefit has been gained. Penalties to offset the economic benefit may be sought in addition to penalties sought under Section III.B.1. of this policy, where the Division determines that it is appropriate to do so.

Where the permittee has failed to comply with a previous CDO for violations described in this paragraph, the penalty for such violations may be increased by up to one hundred percent.

C. Initial Penalty Calculation

The initial penalty will be the sum of the penalties for effluent and administrative violations along with any additional penalty based on an economic benefit to the violator as described in this This penalty will represent the Division's starting point in negotiating the terms of any agreement with the violator. Any reduction in the penalty, as discussed in Section IV. will depend upon the actions taken by the violator to insure that permanent compliance is achieved.

Penalty For Effluent Violations - The penalty for effluent 1. violations will be determined by calculating a penalty for each day of violation and totalling the resulting figures.

For calculation purposes the number of "days of violation" will be determined as follows:

Type of Effluent Violation

Days of Violation

30-Day Average

1 day of violation for each day in the month, the number of days of sampling required in the month by the permit for the violated parameter, or the actual number of samples which exceeded the 30-day average limitation where individual sample data is available. See discussion on page 9.

7-Day Average

7 days of violation, the number of days of sampling required in a 7-day period by the permit for the violated parameter, or the actual number of samples which exceeded the 7-day average limitation where individual sample data is available. See discussion on page 9.

Calculated 30-day Minimum and Daily or instantaneous Minimum/Maximum

Number of actual readings or calculated values which violated the identified limitation.

Daily Average

One day of violation per day that the daily average limit was exceeded.

Yearly Total

Number of individual daily samples which exceeded a thirty day average limitation or the number of individual samples required by the permit during the year where individual sample data is unavailable.

Discharging Without a Permit Number of documented days the unpermitted discharge took place as cited in the NOV. Where the circumstances are such that the discharge could not have been terminated between the documented days, then the intervening days may also be cited.

> The methodology of using the number of samples for determining the number of days of violation was developed in order to reflect the Division's position that penalties for smaller dischargers, who may only be required to sample once a month, should not be as great as those for larger dischargers.

This is the option which will generally be used unless the violations are of a magnitude that the penalties calculated using this approach are not commensurate with the damage to the environment plus any identified economic benefit.

At its discretion, in any case, the Division may equate the number of days of violation to the number of days in the averaging period (eg. 30 days of violation for an exceedance of a 30-day average permit limitation). In recognition of the impact on a large facility's operating budget, sampling frequencies for certain parameters (generally metals and organics) may be set at a lower level than those for parameters whose analyses are less costly. Violations of permit limits for these parameters are more likely to cause an environmental impact and the use of this approach will be more prevalent in these situations.

Where penalties for administrative violations have been calculated on a "per-day" basis (Parts III.B.1 and III.B.2.c.) these penalties will be added to any penalties for effluent violations for any calendar day during which both types of violations were cited. The penalty amount shall not exceed \$10,000 for any single calendar day. Once this has been done, any administrative penalties calculated on a "per violation" basis will be assigned to other days within the appropriate reporting period. Once again, the total penalty for those days cannot exceed \$10,000.

Each "day of violation" will be assigned to the calendar day on which the effluent sample was taken unless the sample date is not provided to the Division. In cases where sample dates are not provided, and where multiple parameters were violated during the same period (30-day, 7-day, etc.), the Division may assume that the samples for individual parameters were obtained on separate calendar days during that period. The potential damage component, the fault component, and the history component for each day of violation will then be totalled to give that day's penalty for effluent violations.

2. Economic Benefit Of Non-Compliance - Where the violator has benefited economically from non-compliance, through savings on delayed design and construction costs, monitoring costs, etc., the violations are considered to be more serious and will be dealt with in one of two ways.

- where the Division has determined, using available information on a qualitative basis, that an economic benefit was realized, but it appears that the benefit may not be significant in comparison to the total penalty within the fault category, the penalty attributable to the economic benefit will be accounted for by increasing the penalty within the fault category. This increase shall come in one of two ways:
 - i. Category 2 violations shall be "moved up" one category into category 3.
 - ii. Category 3 violations shall be increased to the maximum allowable \$3,000/day of violation level.
- b. If the qualitative analysis, or a preliminary quantitative analysis where adequate data is available, indicates that a substantial economic benefit was realized, a detailed accounting of the economic benefit will be made using EPA's BEN program or a similar procedure. The initial penalty shall then be set at the sum of the penalties for the effluent violations and administrative violations, plus the economic benefit.

IV. Final Penalty/Compliance Negotiations

Α. Returning to Compliance - Once the initial penalty has been calculated, the Division and the violator will discuss the potential civil penalty (in a meeting, via letter, or by phone) along with the steps which will be taken to eliminate the non-compliance. Where improvements to the facility are required to eliminate effluent violations the violator will be required to submit a schedule for completing the necessary work. If the Division finds the schedule to be reasonable it will be inserted into the CDO or a settlement agreement and interim limitations may be granted for those parameters for which compliance cannot be immediately attained. Where improved operation and maintenance will bring the facility into compliance, a schedule of compliance may be given, depending upon the Division's determination of a reasonable length of time necessary to implement the necessary changes.

Administrative non-compliance will be dealt with in one of two ways:

1. Where violations of compliance schedules have occurred the order may be amended to include a revised schedule. A revised schedule may be denied if the violator does not provide adequate justification for the delay in meeting the original schedule requirements.

- Where adequate justification is not provided, the violator is expected to expedite completion of the schedule items or face additional civil or judicial action. Other administrative non-compliance, such as failure to submit monthly or annual reports, is expected to be corrected prior to or within a short period after the NOV is issued.
- в. Mitigating Circumstances - The Division's ultimate goal in taking an enforcement action is to bring a facility into compliance, thereby protecting the beneficial uses of the affected state waters. Therefore, by adhering to a schedule which may be included in the amended order, the violator will receive up to a fifteen percent deduction from the penalty for effluent violations. The deduction will not apply to administrative penalties except where the administrative penalty has been assessed as a percentage of the potential damage penalty for effluent violations. Consideration of a deduction may be given where the violater has returned to compliance as a result of additional short-term expenditures for: temporary or rental equipment, additional operational assistance, additional chemical feed equipment, or expenditures for other similar items. expenditures must be over and above those necessary for everyday operation and maintenance.

Where a violator has taken steps beyond those normal or shortterm actions required to return to compliance, by replacing rather than repairing a problem-causing unit process, by making unscheduled process-improving modifications to unit processes other than those which caused the current violations, etc., up to fifty percent of the penalty for effluent violations may be deducted. Normal maintenance or replacement of equipment will not be considered for this deduction.

In exceptional cases, where the violator has returned to compliance <u>and</u> agrees to complete a special project, up to one hundred percent of the penalty for effluent violations may be waived. Such special projects shall be outside of any improvement to be made to the treatment facility, cannot directly benefit the violator, and must result in an identifiable benefit to water quality. In considering the amount of penalty to be waived the Division will use the following guidelines:

- 1. The maximum amount of reduction shall not exceed fifty percent of the actual cost of the project.
- 2. The project should be identified and commenced by the violator and must be primarily designed to benefit the environment rather than to benefit the violator.

In general, the reduced penalty amount (effluent and administrative) will generally not be less than any identified economic benefit of non-compliance except where an extraordinary effort or environmentally enhancing project has been completed.

- C. Additional Penalty Reductions After considering all of the previously mentioned factors and circumstances the Division will have developed a fully defensible penalty, which reflects the degree of noncompliance, for recommendation to the Assistant Director. At this point the only factors which will be considered for further reduction of the penalty are the violator's ability to pay and the relative strength of the Division's case should the violator appeal the amount of the penalty.
 - 1. Ability To Pay - The Division will evaluate the ability of the violator to pay the proposed civil penalty and to pay for the proposed measures which will bring about long-term compliance. The Division will carefully analyze this factor where it appears that the violator can convincingly demonstrate an inability to pay a given penalty. violator has the principal burden of establishing a claim of inability to pay. The Division typically will seek to settle for as high an amount which it believes the violator can afford without seriously jeopardizing its ability to continue operations and still achieve compliance, unless the violator's behavior has been exceptionally culpable, recalcitrant or threatening to human health or the environment. The Division, in assessing the violator's ability to pay, may consider payment of the penalty over a period of two to three years in order to insure that as much of the original penalty amount as possible is collected.

Many factors often have a significant impact on ability to pay and may justify a reduction of a penalty. For example, the Division may consider high user fees, high percentage of local funds spent on a treatment facility, low bond rating, low per capita income, low total of population served by the facility, bankruptcy, etc., in evaluating an "inability to pay" claim. Typically, these factors will occur in smaller municipalities. In order to provide a consistent approach to the "bottom line" for penalties for small municipalities, the Division will generally consider the cost of providing wastewater treatment as a percentage of the overall available revenue (eg. user fee/per capita income).

2. Litigation Considerations - The Division will evaluate every penalty with a view toward the potential for protracted litigation and attempt to ascertain the maximum civil penalty that the Commission or the district court is likely to impose if the amount recommended by the Assistant Director is appealed. The Division will take into account the inherent strength of the case considering, for example, the probability of proving questionable violations, the probability of acceptance of an untested legal construction, the potential effectiveness of the Division's witnesses, and the potential strength of the defendant's equitable defenses.

Examples of equitable considerations which may lead to adjustment of the penalty amount include the following: 1) whether the violator reasonably, conclusively, and detrimentally relied on the Division's, EPA's, or a local agency's representations or actions; 2) whether the violator has requested modification of its final effluent limits (related to, for example, pending industrial variance decisions, new wasteload allocations, etc.); 3) whether the violations are clearly attributable to accepting new discharges from nearby, non-complying jurisdictions; and 4) whether compliance has been delayed in an unusual or unreasonable manner by the Division or other regulatory agencies, through no fault of the violator.

These equitable considerations will justify mitigation only to the extent that they directly caused or contributed to the violations. In such cases, the Division may reduce the amount of the civil penalty it will accept at settlement to reflect these considerations.

D. Negotiated Settlement - If the Division and the violator can reach agreement on the amount of the civil penalty, then the Division will reflect this amount, and any other agreed upon conditions, in a stipulated agreement which will be signed by both parties as well as the Assistant Director. The final penalty in such cases shall not be less than the economic benefit plus some additional amount in proportion to the calculated penalties for effluent and administrative violations, unless the violator's ability to pay would make collection of such a penalty impossible.

The Division shall prepare a fully documented summary of the circumstances that were considered in arriving at the final penalty amount. In the majority of cases, the Division will expect to recover the identified economic benefit from violations at "major" facilities.

BENEFICIAL USE TABLE

POLLUTANT	AQUATIC CL 1	LIFE CL 2	WATER SUPPLY	AGRICU- LTURAL	RECREA	TION CL 2	EFFLUENT REUSE
Flow	b	b	þ	b	þ	b.	b
Metals or Cyanide	8	6	9a	5a	0	0	0
Sulfide, NO ₂ , Ammonia, CL ₂	8	6	0	0	0	0	0
Carcinogens	8	7	12	6	8	8	0
Mutagens; Targe Organ Toxics	et 8	7	12	6	8	8	0
Pesticies; Herbicides	11	8	12	8a	0	0	0
Other Toxic Organics	8	7	9a	5a	. 0	0	0
Hazardous Substances(c)	10	7	9a	5a	0	0	0
Nitrate, Fluoride	0	0	6a	0	0	o	0
Boron, Chloride Sulfate	0	0	0	2a	0	0	0
BOD ₅ , D.O.	8a	.5a	0	0	0	0	0
рн	6	4	0	2a	4a	2a	0
Fecal Coliform	0	0	0	0	4	2	4
Total Coliform	0	0	. 0	0	4	2	4
Phosphorus	8	6	0	0	0	0	0

a To be used only if protection of the identified beneficial use was the basis for the limitation.

FIGURE 1.

b Violations of the flow limit will generally be assigned a point value between zero and two. In cases where the flow violations were so great that an in-stream impact may have been caused, the flow violation will be assigned the highest point value based on any parameters whose calculated in-stream concentration (using the low-flow and ambient pollutant concentration established in the permit) exceeded the stream standard.

c Hazardous substances as defined in 40 CFR, Part 261.

TECHNOLOGY-BASED LIMITS (VIOLATION DOES NOT FALL UNDER BENEFICIAL USE TABLE, FIGURE 1)

PARAMETER	POINTS
BOD TSS Other Nontoxics Metals Flow; Fecal Coliform Other Toxics BOD, and TSS % Removal	4 3 4 1a 4

a Only used where no water quality-based limits are in effect.

FIGURE 2.

PERCENT EXCEEDANCE *

Actual Flow (MGD)	L 0-20	<u>L 20-50</u>	<u>L 50-90</u>	L 90-140	L 140-200	D L 200
L 0-0.05 L 0.05-0.10 L 0.10-0.25 L 0.25-0.50 L 0.50-1.00 L 1.00-2.50	1.02 1.05 1.10 1.20 1.35 1.50	1.05 1.08 1.13 1.24 1.39 1.54	1.09 1.12 1.18 1.28 1.44 1.60	1.14 1.17 1.23 1.34 1.51 1.68	1.20 1.24 1.29 1.41 1.59	1.30 1.33 1.40 1.52 1.72
L 2.50-10.00 L 10.00	1.75 2.00	1.80	1.87	1.96 2.23	2.06	2.23

a for flow violations, where in-stream exceedances of the standards were calculated, the percent exceedance shall be based on the amount the calculated in-stream concentration exceeded the stream standard.

FIGURE 3.

L = greater than